IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2433 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DINESH KUMAR AMARJI KALAJI CHAUDHARI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 2433 of 2002

MS DR KACHHAVAH for Petitioner No. 1

MR SAMIR DAVE AGP for Respondents

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 04/05/2002

ORAL JUDGEMENT

By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 11/2/2002 passed by the Police Commissioner, Ahmedabad City.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon the two offences registered against the detenu under Prohibition Act. The learned advocate for the petitioner has further submitted that on the date of passing detention order, the petitioner was in police custody, and this aspect would have been considered by the detaining authority while passing the detention order. She has further submitted that the detaining authority has passed the impugned detention order assuming that the petitioner will apply for bail and after obtaining bail, the petitioner will continue his alleged illegal activities. She has further submitted that while passing the impugned detention order, the detaining authority was not having sufficient material and the detaining authority has passed the impugned detention order merely on assumption. In this connection, she has drawn my attention towards the case of Amritlal and Others Vs. Union Govt. Through Secy., Ministry of Finance and Others, 2001 SCC (Cri) 147 wherein it was held at Head note as under:

> "Preventive Detention--Detention order-Subjective satisfaction--Detenu already in jail-Detaining authority must be satisfied on the basis of available cogent material about likelihood of the detenu being released on bail and not merely about likelihood of his moving application for bail--In absence of such satisfaction detention order cannot be sustained--Prevention of Illicit Traffic in Narcotic drugs and Psychotropic Substances act, 1988, S.3(1)"

4. It appears that on the date of passing the detention order, the detenu was in police custody, and hence in view of the above judgement rendered in the case of Amritlal (Supra), the detention order is illegal and cannot be sustained and the same is required to be quashed and set aside.

5. The petition is allowed. The impugned order of detention dated 11/2/2002 passed against the detenu is hereby quashed and set aside. The detenu namely Dineshkumar Amarji Kalal Chaudhari is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

Rafik